IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 12 OF 2002.

State through Public
Prosecutor, Panaji, Goa. ... Applicant.

Versus

Basudev Martha, r/o
Eklat, Curtorim, presently
in Sada Sub-Jail, Sada,
Vasco da Gama, Goa. ... Respondent.

Mr. A.P. Lawande, Public Prosecutor for the Applicant State.

Mrs. Leena Dharwadkar, Advocate for the Respondent under Legal Aid Scheme.

Coram: P.V. HARDAS, J.

Date: 20th June 2002.

ORAL ORDER.

By consent of parties, this revision is taken up for final disposal at the stage of admission. In response to the notice issued by this Court, the respondent had appeared in person and had requested this Court to appoint a lawyer under the Legal Aid Scheme to represent him in this revision. Accordingly, this Court had appointed Mrs. Leena Dharwadkar as a counsel to represent the respondent.

2. This revision filed by the State takes exception to an order passed by the IInd Additional Sessions Judge, South Goa, Margao, dated 6th February 2002, in sessions Case No. 33 of 2001, discharging the respondent/original accused for an offence punishable

under Section 307 of the Indian Penal code and remitting the case to the learned Chief Judicial Magistrate, Margao, for trial of an offence under Section 324 of the Indian Penal Code.

3. The learned IInd Additional Sessions Judge, South Goa, Margao, had come to a conclusion, at the time of framing of the charge, that the injury, which had been inflicted by the accused, was a contused lacerated wound on the left parietal region and the injury, as opined by the Medical Officer was a simple injury and, therefore, an offence under Section 307 had not been made out. The learned IInd Additional Sessions Judge held that, since the weapon of offence was an iron pipe with a diameter of 2 cms., an intention cannot be attributed to the accused that he had intended or he had the requisite knowledge that inflicting such an injury was likely to cause death. The learned IInd Additional Sessions Judge, Margao, therefore, discharged the accused of the offence under Section 307 and held that an offence under Section 324 was made out and remitted the case to the Chief Judicial Magistrate to try the accused under Section 324 of the Indian Penal Code.

4. Mr. A.P. Lawande, the learned Public

Prosecutor appearing for the applicant State, has urged before me that at the time of framing of the charge, the Court has the undoubted power to marshal the material and weigh and sift the evidence but, this exercise is to be done only for the purpose of finding out if prima facie an offence had been made out. Such marshalling, sifting and weighing of evidence would not entitle the learned trial Court to appreciate the evidence. In support of his contention, the learned counsel has relied on **Supdt. & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and others**, A.I.R. 1980 S.C. 52 and on **State of M.P. v. S.B. Johari and others**, 2000 Cri.L.J. 944.

5. In Supdt. & Remembrancer of Legal Affairs, West Bengal cited supra, the Apex Court has held thus:-

> " At the stage of framing charges, the prosecution evidence does not commence. The Magistrate has therefore, to consider the question as to framing of charge on a general consideration of the materials placed before him by the investigating Police Officer. The standard test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of S.227 or 228. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients

> constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence."

6. In State of M.P. cited supra, the Apex Court has held thus:-

> " Instead of considering the prima facie case, the High Court in Criminal revision cannot appreciate and weigh the materials on record for coming to the conclusion that charge against the accused could not have been framed. it is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for conviction of the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence if any, cannot show that accused committed the particular offence. In such case there would be no sufficient ground for proceeding with the trial."

7. It is clear that at the stage of framing of the charge, though the Court has the undoubted power to sift and weigh the evidence, that sifting and weighing of the evidence would not entitle the Court to appreciate the evidence. The learned IInd Additional Sessions Judge, South Goa, Margao, at the stage of

framing of the charge has held that the accused did not have the intention or requisite knowledge that inflicting such an injury was likely to cause death. Such a finding could be arrived at by the Court after the evidence of the witnesses had been recorded and when the Court was called upon to appreciate their evidence.

8. Mrs. Leena Dharwadkar, who has ably argued on behalf of the respondent, has submitted that factually the iron pipe which had only a diameter of 2 cms. could not be said to be a weapon capable of causing death. She has also urged that looking to the nature of injury, it cannot be said that the accused had the requisite intention to cause death. These submissions in respect of appreciation of the evidence, according to me, are premature at this stage. The Order of the learned IInd Additional Sessions Judge, South Goa, Margao, is, therefore, unsustainable and deserves to be quashed and set aside. Accordingly, the Order dated 6th February 2002, in Sessions Case No. 33 of 2001, discharging the respondent/accused for an offence punishable under Section 307 of the Indian Penal Code is quashed and set aside. The trial to proceed before the IInd Additional Sessions Judge, South Goa, Margao, as per law.

9. Criminal Revision Application is, therefore, allowed on aforesaid terms. True copy duly authenticated be given to the parties to act upon.

P.V. HARDAS, J.

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